

REMARKS

Claims 71-89 are pending in the above-identified patent application. Claims 71, 72 and 75 have been amended by way of the present amendment. Reconsideration is respectfully requested.

In the outstanding Office Action, claims 71-89 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention; claims 71-89 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over the previously applied U.S. Patent No. 5,794,207 (Walker et al.), in view of the Examiner's Official Notice.

35 U.S.C. § 112 Claim Rejections

Claims 71-89 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Reconsideration is respectfully requested.

Claims 71, 72 and 75 have been amended to clarify the invention. In particular, claim 71 has been amended to recite:

first dealing processing means for executing a first sale by pre-engagement, when said buying information received from said buyer's terminal devices and stored in said storage means is transmitted to said seller's terminal devices and subscription information for said transmitted buying information is received from said seller's terminal devices, based on said buying information and said subscription information;

second dealing processing means for executing a second sale by pre-engagement, when said selling information received from said seller's terminal devices and stored in said storage means is transmitted to said buyer's terminal devices, and buying registration information for said transmitted selling information is received from said buyer's terminal devices, based on said selling information and said buying registration information; and

third dealing processing means for executing a third sale by pre-engagement, when buying conditions of said buying

information received from said buyer's terminal devices and stored in said storage means and selling conditions of said selling information received from said seller's terminal devices and stored in said storage means agree with each other.

Further, Claim 72 was amended to recite:

copying processing means for using selling information of ~~unconcluded goods which are left unsold~~ among said selling information output from said seller's terminal devices for goods to be processed through said third dealing processing means, after executing processing of ~~a~~ the first sale by pre-engagement by said first dealing processing means.

Finally, Claim 75 has been amended to recite:

dealing processing means for searching selling information and buying information satisfying ~~the conditions~~ goods attributes with each other, sequentially from ~~the cluster~~ clustered pieces of selling information and clustered pieces of buying information having great numbers of conditions for clustering by said first and second clustering means, and executing a sale based on the selling information and the buying information satisfying ~~the conditions~~ goods attributes with each other, by using each piece of selling information and each piece of buying information, included in the ~~cluster of selling information and the cluster of buying information~~ the clustered pieces of selling information by said first and second clustering means, respectively, which are clustered with a same goods attributes ~~the same conditions from said clustered pieces of selling information and said clustered pieces of buying information.~~

Support for the amendments is provided at least at page 5, lines 16-25, page 6, lines 7-18; page 7, lines 2-9; and page 8, lines 2-7; page 17, lines 1-29; and page 18, lines 1-8. Therefore, it is respectfully submitted that the amendments raise no question of new matter and the claims are now definite.

35 U.S.C. § 103 Claim Rejections

Claims 71-89 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the previously applied U.S. Patent No. 5,794,207 (Walker et al.), in view of the Examiner's Official Notice. Reconsideration is respectfully requested.

Walker et al. discloses an invention that is a method and apparatus for effectuating bilateral buyer-driven commerce that allows prospective buyers of goods and services to communicate a binding purchase offer globally to potential sellers, for sellers conveniently to search for relevant buyer purchase offers, and for sellers potentially to bind a buyer to a contract based on the buyer's purchase offer.¹ Moreover, Walker et al. discloses the seller receives conditional purchase offers from buyers, makes them available for viewing by potential sellers, and allows sellers to bind them and that a buyer is able to communicate his commitment to follow through on an offer to a seller, giving the seller confidence that if he can produce the goods, the buyer has the ready capacity to pay.²

In particular, **FIG. 1** of Walker et al. discloses an apparatus comprising: a seller interface **300**, central controller **200**, and buyer interface **400** (collectively the "nodes"), wherein each node is connected via an Internet connection using a public switched phone network, data lines, cellular, Personal Communication Systems ("PCS"), microwave, or satellite networks.³ Further, **FIG. 2** of Walker et al. discloses a central controller **200** includes central processor (CPU) **205**, cryptographic processor **210**, RAM **215**, ROM **220**, payment processor **230**, clock **235**, operating system **240**, network interface **245**, and data storage device **250**.⁴ Furthermore, **FIG. 9**, **FIG. 11** and **FIG. 12** of Walker et al. disclose the seller selecting a conditional purchase offer; the binding of a conditional purchase offer; and an exemplary procedure for exchanging goods and payment between buyer and seller, respectively.⁵ Moreover, Walker et al. discloses receiving conditional purchase offers from buyers, making them available for viewing by potential sellers,

¹ Walker et al. at ABSTRACT.

² *Id.* at column 11, lines 48-51.

³ *Id.* at column 11, lines 55-65.

⁴ *Id.* at column 12, lines 4-7.

⁵ *Id.* at column 11, lines 23-29.

and allowing sellers to bind them; as well as a buyer being able to communicate his commitment to follow through on an offer to a seller.

However, Walker et al. nowhere discloses, as independent claims 71, 75, 77, 80, 81 and 82, recite:

storage means for storing selling information and buying information for goods which lose or decrease in value over time, which are received from said plural seller's terminal devices and said plural buyer's terminal devices.

The outstanding Office Action acknowledges this and other deficiencies in Walker et al. and attempts to overcome all of these deficiencies by repeatedly taking Official Notice in the final rejection of November 21, 2006. However, it is respectfully submitted that **Section 2144.03** of the Manual for Patent Examining and Procedure (MPEP) in indicating “when it is appropriate to take Official Notice” states:

[o]fficial notice without documentary evidence to support an examiner's conclusion is permissible *only in some circumstances*. While “official notice” may be relied on, *these circumstances should be rare when an application is under final rejection* or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration* as being well-known (emphasis added).

As indicated above, taking of Official Notice “should be rare when an application is under final rejection.” In that Official notice was taken in the final rejection of the last Office Action in the present case, Applicant’s respectfully request that specific references or authority for the statements be supplied as documentary evidence of the referenced capabilities being “well known” so that Applicant has an opportunity to review and develop counter-arguments against the contention of the outstanding final rejection that all of the limitations indicated are “well-known” in the next Office Action.

In addition, Walker et al. nowhere discloses, as independent claim 79 recites: “second storage means for storing information on distribution costs between two points in accordance with a quantity of shipment.” Therefore, claim 79 is not disclosed, suggested or made obvious by Walker et al. and thus, claim 79, and claims dependent thereon patentably distinguish thereover.

Further, regarding claim 72, Walker et al. nowhere discloses: “copying processing means for using selling information of goods which are left unsold among said selling information output from said seller’s terminal devices for goods to be processed through said third dealing processing means, after executing processing of the first sale by pre-engagement by said first dealing processing means.” Moreover, Walker et al. nowhere discloses the limitations of claims 73 and 74. Since the final rejection in the outstanding Office Action did not explicitly cite a reference regarding these limitations, it is respectfully requested that an explicit citation as to where Walker et al. or another reference, or another reference to be combined with Walker et al. discloses the above limitation be supplied in the next Office Action.

Further, regarding claim 75, Walker et al. nowhere discloses: “first clustering means for clustering pieces of selling information according to goods attributes included in said selling information” nor “second clustering means for clustering pieces of buying information according to goods attributes included in said buying information” either alone or in combination. Though the outstanding Office Action suggests a motivation of “faster access” in database management applications for clustering, it is respectfully submitted that this reasoning for “clustering,” teaches away from the limitation the claim recites: “according to goods attributes.” Moreover, Walker et al. nowhere discloses the limitations of claim 76 which states: “wherein cluster level is divided into plural levels in accordance with the number of conditions for determining clusters by said first clustering means and said second clustering means.” As noted, for claim 75, this is not motivated or directed to the “faster access” argument of the outstanding Office Action. Since the final rejection in the outstanding Office Action did not explicitly cite a reference regarding these limitations, it is respectfully requested that an explicit citation as to where Walker et al. or

another cited reference, or another cited reference to be combined with Walker et al. discloses the above limitations be supplied in the next Office Action.

Further, regarding claim 79, Walker et al. nowhere discloses: “second storage means for storing information on distribution costs between two points in accordance with a quantity of shipment.” Since the final rejection in the outstanding Office Action did not explicitly cite a reference regarding these limitations, it is respectfully requested that an explicit citation as to where Walker et al. or another cited reference, or another cited reference to be combined with Walker et al. discloses the above limitations be supplied in the next Office Action.

Furthermore, regarding claims 80, 81, and 82, Walker et al. nowhere discloses: “said seller’s terminal devices comprising a means for transmitting/receiving information for goods which lose or decrease in value over time” nor “said buyer’s terminal devices comprising a means for transmitting/receiving information for goods which lose or decrease in value over time.” Since the final rejection in the outstanding Office Action did not explicitly cite a reference regarding these limitations, it is respectfully requested that an explicit citation as to where Walker et al. or another cited reference, or another cited reference to be combined with Walker et al. discloses the above limitations be supplied in the next Office Action.

Therefore, it is respectfully submitted that claims 71-89 are not disclosed, suggested or made obvious by Walker et al. and patentably distinguish thereover.

Conclusion

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 21776-00050-US from which the undersigned is authorized to draw.

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Respectfully submitted,

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